SYED MUBARAK SYED AHMAD *a*

v.

MAJLIS PEGUAM MALAYSIA

COURT OF APPEAL, KUALA LUMPUR *b*
GOPAL SRI RAM JCA
SITI NORMA YAAKOB JCA
DENIS ONG JCA
[CIVIL APPEAL NO: W-02-107-98]
31 MAY 2000 *c*

LEGAL PROFESSION: *Admission - Practising certificate - Applicant a public accountant - Application rejected - Legal Profession Act 1976, ss. 30(1)(c) & 34 - Proper construction of the sections - Whether applicant can practise more than one profession* *d*

STATUTORY INTERPRETATION: *Construction of statutes - Recent attitude of the court - Purposive approach preferred*

The appellant is a practising public accountant since 1979. He applied to the bar council in 1997 for an annual certificate following his admission as an advocate and solicitor of the High Court of Malaya. His application *e* was rejected on the ground that he was disqualified under s. 30(1)(c) Legal Profession Act 1976. He then applied to the High Court for the certificate but his application was also refused. The appellant appealed to the Court of Appeal.

Held: *f*
Per Gopal Sri Ram JCA

[1] Over the past few years, the court no longer resort to the literal rule when interpreting statutes, especially if it will produce an absurd result or it does not advance the aim or object of a statute. *g*

[2] The object of the Legal Profession Act 1976 is to maintain high standards in the legal profession. It is obvious that parliament intended that persons who choose to be advocates and solicitors must exclusively practise as such. If Parliament intended that an advocate and solicitor should be permitted to practise more than one profession, one should *h* be able to find clear language in which such permission is to be found.

[3] The learned judge was correct to adopt a purposive approach to the construction of s. 30(1)(c).

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[4] This was not a case where the appellant had been deprived of his livelihood. He already had a means of livelihood as a public accountant. Therefore, the argument based on art. 8 Federal Constitution was not acceptable.

[Appeal dismissed with no orders as to costs.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Perayu adalah seorang akauntan awam yang beramal sejak tahun 1997. Pada tahun 1979 beliau memohon kepada Majlis Peguam untuk mendapatkan satu sijil tahunan berikutan dengan kemasukan beliau sebagai seorang peguamcara dan peguambela Mahkamah Tinggi Malaya. Permohonan beliau telah ditolak atas alasan bahawa beliau tidak layak dibawah s. 30(1)(c) Akta Profesyen Undang-undang 1976. Beliau kemudiannya memohon kepada Mahkamah Tinggi untuk mendapatkan sijil tersebut tetapi permohonan beliau telah ditolak. Perayu merayu kepada Mahkamah Rayuan.

Diputuskan:
Oleh Gopal Sri Ram HMR

[1] Semenjak beberapa tahun yang lepas, mahkamah tidak lagi menggunakan kaedah harafia apabila mentafsir statut, terutamanya jika kaedah itu akan menghasilkan keputusan yang mustahil atau ianya tidak akan mencapai tujuan atau matlamat sesuatu statut.

[2] Tujuan Akta Profesyen Undang-Undang 1976 ialah untuk menjaga standard profesyen undang-undang. Ianya jelas bahawa Parlimen berniat supaya orang-orang yang memilih untuk menjadi peguambela dan peguamcara mestilah mengamalnya secara eksklusif. Jika Parlimen mahukan seorang peguambela dan peguamcara beramal lebih dari satu profesyen, tentunya sudah terdapat kebenaran tersebut dinyatakan secara jelas didalam akta ini.

[3] Hakim yang bijaksana adalah betul apabila mengguna pakai cara purposif (purposive approach) untuk mentafsir s. 30(1)(c).

[4] Ini bukannya satu kes di mana perayu telah dilucutkan punca pencariannya. Beliau telah pun mempunyai satu punca pencarian sebagai seorang akauntan awam. Hujahan berdasarkan Perkara 8 Perlembagaan Persekutuan tidak boleh diterima.

[Rayuan ditolak dengan tidak memberikan perintah bagi kos.]

Case(s) referred to:
Carter v. Bradbeer [1975] 3 All ER 158 ***(foll)***
DP Vijandran v. Majlis Peguam [1996] 1 CLJ 23 ***(dist)***
Menteri Sumber Manusia v. Association of Bank Officers, Peninsular Malaysia [1999] 2 CLJ 471 ***(refd)***
State of Madhya Pradesh v. Nandlal [1986] 4 SCC 566 ***(refd)***
Sydney Municipal Council v. Campbell [1925] AC 338 ***(refd)***

Legislation referred to:
Federal Constitution, arts. 5, 8
Interpretation Acts 1948 & 1967, s. 17A
Legal Profession Act 1976, ss. 30(1)(c), 34

For the appellant - Hamid Sultan Abu Backer; M/s Hamid Sultan & Rakan-Rakan
For the respondent - Robert Lazar (LH Liew with him); M/s Shearn Delamore & Co

[Appeal from High Court, Kuala Lumpur; Originating Summons No: S5-24-759-1997]

Reported by Yow Ting Fong

JUDGMENT

Gopal Sri Ram JCA:

The short question for decision in this appeal is whether an advocate and solicitor may simultaneously practise another profession. The factual background from which that question arises is as follows.

The appellant is a public accountant. He has been practising as such since 1979. He practises under the name and style of M/s Syed Mubarak & Co. On 9 January 1997, the appellant was admitted and enrolled as an advocate and solicitor of the High Court of Malaya. He then applied to the Bar Council for a sijil tahunan or annual certificate. His application was rejected. He then applied to the High Court under s. 34 of the Legal Profession Act 1976 ("the Act") for the certificate. The High Court refused his application. He then appealed to us. We heard and dismissed his appeal.

The bar council refused to issue the annual certificate to the appellant on the sole ground that he was disqualified under s. 30(1)(c) of the Act. That provision reads:

> 30(1) No advocate and solicitor shall apply for a practising certificate:
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> …
>
> (c) if he is gainfully employed by any other person, firm or body in a capacity other than as an advocate and solicitor.

The learned judge accepted the Bar Council's interpretation of the section. In his carefully considered judgment, the learned judge said:

> Adopting the *Concise Oxford Dictionary's* definition of the word employ, two qualifications are required to be satisfied before one can be considered as employed. The first: is the use of the service of the person. The second: relates to payment of his service. Thus when a client requires the service of a professional public accountant, and when the latter accepts for a fee, the public accountant is considered employed; the two qualifications are satisfied.
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> Often, we also refer to such appointments of professionals as being engaged. Even the word engaged connotes a sense of being employed. In the same *Concise Oxford Dictionary*, engaged is defined as 'employ or hire (a person).' This similarly applies to another common word retained to describe the engagement or employment of the service of a professional. The word retain is explained by the same dictionary as: 'secure the service of (a person esp. a barrister) with a preliminary payment.' Here again, the mention of payment is required as a qualification. In both instances – engage and retain – the payment is by the client and the employment is also by the client. Thus, in relation to the phrase 'is gainfully employed by any other person, firm or body' mentioned in section 30(1)(c) of the Act, it must be accepted to include the employment by one's own clients. When such clients are engaged in a capacity other than as an advocate and solicitor, an applicant for a Sijil Tahunan who is gainfully employed by them will be disqualified from obtaining such a practising certificate.

The appellant criticised this approach of the learned judge. He argued that the words "gainfully employed" refer to a contract of service and not to a contract for services. Thus, according to the appellant, an advocate and solicitor is not entitled to apply for an annual certificate only where he is employed under a contract of service in some capacity other than as an advocate and solicitor. The appellant relied on the decision of this court in *DP Vijandran v. Majlis Peguam* [1996] 1 CLJ 23 in support of his argument. With respect, we are unable to see how this case is of any assistance to the appellant. All that was held was that the bar council could not use its power to issue an annual certificate for a collateral purpose. It stems from the well-established proposition that a public body cannot use its statutory powers for a purpose other than that intended by parliament. See, *Sydney Municipal Council v. Campbell* [1925] AC 338; *Menteri Sumber Manusia v. Association of Bank Officers, Peninsular Malaysia* [1999] 2 CLJ 471. What we are really concerned with in the present case is the proper construction of s. 30(1)(c) of the Act.

Now, it is true that a literal interpretation of s. 30(1)(c) would produce the meaning contended for by the appellant. But if you look at the decisions of our courts over the past few years, you will notice that we no longer resort to the literal rule when interpreting statutes. We will not use it when it will produce an absurd result. Neither will we use it if it

does not advance the aim or object of a statute. Indeed, parliament has noticed the change in our attitude and given express effect to it in s. 17A of the Interpretation Acts 1948 & 1967. That section reads:

> 17A. In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

It is interesting to note that in England too the courts have preferred the purposive approach to other guides to construction. In *Carter v. Bradbeer* [1975] 3 All ER 158, Lord Diplock made some observations of general importance that merit recall. He said (at p. 161):

> A question of statutory construction is one in which the strict doctrine of precedent can only be of narrow application. The *ratio decidendi* of a judgment as to the meaning of particular words or combinations of words used in a particular statutory provision can have no more than a persuasive influence on a court which is called on to interpret the same word or combination of words appearing in some other statutory provision. It is not determinative of the meaning of that other provision. This is because the inherent flexibility of the English language may make it necessary for the interpreter to have recourse to a variety of aids or canons of construction, which are not merely lexicographical, in order to select from what may be a number of different meanings which the words as a matter of language are capable of bearing, the precise meaning in which the legislature intended them to be understood. Canons of construction may prove to be conflicting guide posts: they may point different ways. Fashions in parliamentary draftsmanship and the attitude of the legislature toward innovations in established law are not unchanging. Such changes as have taken place are properly reflected in the relative importance to be attached to the guidance given by competing canons of construction which point in different ways. *If one looks back to the actual decisions of this House on questions of statutory construction over the past thirty years one cannot fail to be struck by the evidence of a trend away from the purely literal towards the purposive construction of statutory provisions.*
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> Changes in the judicial approach to questions of statutory construction are not the result of some specific decision of your Lordships' House identifiable as a landmark in this field of law. They have been fostered by the influence, persuasive and pervasive, of the similarity of reasoning to be found in the judgments of individual judges even though they may differ as to the result of applying that reasoning to the particular words of the particular statute which is under consideration in the case. The persuasive reasoning which involves a reformulation of particular canons of construction or consideration of the circumstances which affect the relative weight to be attached to them, does not depend on whether the author of the judgment is among the majority or the minority as respects the actual decision in the case.

To return to the present instance, there can be little argument that the primary purpose of the Act is to regulate the legal profession. The object of parliament is to maintain high standards in the profession. That is because the general public must have confidence in the integrity and the independence of the legal profession. It is obvious that parliament intended that persons who choose to be advocates and solicitors must exclusively practise as such. If parliament intended that an advocate and solicitor should be permitted to practise more than one profession, one should be able to find clear language in which such permission is to be found.

If we were to accede to the appellant's invitation and apply the literal rule to s. 30(1)(c) the ultimate result would not accord with the true intention of parliament. It will result in people being able to argue that one could practise both as an advocate and solicitor and, say, a doctor and as an architect as well. That would drive a coach and four through the Act. It would defeat the purpose for which the Act was passed. We cannot therefore accede to the appellant's arguments.

It is apparent from the passages that we have already quoted from his judgment, that the learned judge adopted a purposive approach to the construction of s. 30(1)(c). He was entirely correct in doing so. We would therefore affirm his decision.

There is one last point. In his written submissions lodged in the court below, the appellant relied on art. 8 of the Federal Constitution. He argued that the decision of the respondent had deprived him of his livelihood. We consider the reliance on art. 8 to be misconceived. That article strikes at discriminatory action by the state or a public body. It is art. 5 that protects livelihood.

The learned judge rejected the constitutional argument. We agree with him. He called it hogwash. The appellant has complained about this. The complaint is justified. The words used are too strong. Judges should not resort to the use of such language. It only serves to denude the respect that they ought to command. There should always be temperance in the language in which a judgment is couched. No reminder of this is, we trust, necessary. Upon an occasion such as the present it is apposite to recall the words of Bhagwati CJ, in *State of Madhya Pradesh v. Nandlal* [1986] 4 SCC 566, at p. 615:

> We may observe in conclusion that judges should not use strong and carping language while criticising the conduct of parties or their witnesses. They must act with sobriety, moderation and restraint. They must have the humility to recognise that they are not infallible and any harsh and disparaging strictures passed by them against any party may be mistaken and unjustified and if so, they may do considerable harm and mischief and result in injustice.

We said that we agreed with the learned judge's rejection of the argument based on the Federal Constitution. That is because this is not a case where the appellant had been deprived of his livelihood. The appellant already had a means of livelihood as a public accountant. Nobody deprived him of that livelihood. So the constitutional argument does not bite.

In the result, the appeal was dismissed with no orders as to costs and the deposit was ordered to be refunded to the appellant.